



TED TORGRIMSON
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BAYPORT MN 55003-1490

COPY MAILED

MAR 31 2004

In re Application of
Ted Michael Torgrimson
Application No. 10/662,201
Filed: September 15, 2003
Title of Invention: CLAMP STAND

**OFFICE OF PETITIONS
ON PETITION**

This is a decision on the petition filed January 26, 2004, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of September 15, 2003, with Figures 1-3 described in the specification as a part of the original disclosure.

The petition is **DISMISSED**.

On September 15, 2003, the application was filed.

On December 22, 2003, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Item(s) in a Nonprovisional Application stating that the application had been accorded a filing date of September 15, 2003, but that Figures 1-3 described in the specification appeared to have been omitted from the application. A two (2) month period for reply was set.

In response, on January 26, 2004, the present petition was filed, accompanied by one (1) sheet of drawings containing Figures 1-3. Petitioner argues that the original copy of Figures 1-3 was filed with the application on September 15, 2003 and requests that the application be accorded a filing date of September 15, 2003 with Figures 1-3 included.

Petitioner's argument has been considered, but is not persuasive. The U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the papers originally filed reveals that, *inter alia*, one (1) sheet of drawings containing Figures 4-6 was received on September 15, 2003. No sheets of drawings containing Figures 1-3 was filed on September 15, 2003, since no such pages of drawings are present among the application papers received on that date. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

It is noted that the USPTO has a long-established and well publicized practice for *prima facie* establishing the date of receipt of correspondence that has either been mailed or otherwise delivered to the PTO, and is asserted to have been subsequently misplaced: the itemized postcard receipt practice of MPEP 503.¹ This practice requires that any paper(s) for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper(s). A postcard receipt which itemizes and properly identifies the paper(s) which is being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. However, due to the absence in the record of a postcard receipt itemized with respect to the drawings that bears a USPTO date stamp of September 15, 2003, showing that one (1) sheet of drawings containing Figures 1-3 were received in the USPTO on

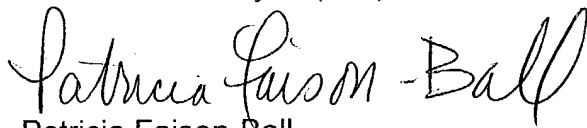
¹ The public was afforded a "reminder" of the then extent post card receipt practice at 857 Off. Gaz. Pat. Off. 667 (O.G.) (Nov. 21, 1968). This specific notice is usually repeated annually, in a January "Consolidated Listing" section of the O.G. that contains important O.G. notices of continuing relevance.

September 15, 2003, the application cannot be accorded a filing date of September 15, 2003, with Figures 1-3 as a part of the original disclosure.

The application will be processed and examined using only the application papers present on September 15, 2003. The copy of the one (1) drawing sheet containing Figures 1-3 supplied with the present petition will not be used for processing or examination, but will be retained in the application file.

The Office of Initial Patent Examination will be notified to process the application with a filing date of September 15, 2003, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.

A handwritten signature in cursive script that reads "Patricia Faison-Ball". The signature is written in dark ink and is positioned above the printed name and title.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions